

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIG.,))))	2:12-md-02323-AB
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**[CORRECTED] OPPOSITION TO CO-LEAD CLASS COUNSEL'S
MOTION TO SET COORDINATED BRIEFING SCHEDULE**

Class member Cleo Miller hereby opposes Class Counsel's Motion to Set a Coordinated Briefing Schedule, because the proposed schedule improperly incorporates Class Counsel's illogical assertion that any fee petition not already on file is somehow time-barred. To the contrary, all fee petitions are currently premature, because there is currently no evidence before the Court of the value of benefits conferred upon the class on which to base a percentage fee award.¹ The universe of potential settlement beneficiaries will not be known until August 7, 2017, and the number of class members with Qualifying Diagnoses will not be known until several months after the BAP program commences. Therefore, there is no reason for this Court to set an arbitrarily premature deadline for the filing of fee petitions, when those petitions would not be ripe at this time.

¹ Furthermore, Class Counsel's and MoloLamken's fee petitions are premature because this Court has not yet determined that it is appropriate to file fee petitions at this time, pursuant to ¶14 of the Final Order and Judgment ("motions for and award of attorneys' fees and reasonable incurred costs ... may be filed at an appropriate time to be determined by the Court..."). In addition, motions for fees and costs filed in this case are governed by FRCP 23(h)(1), which requires that notice of a motion for fees by class counsel be directed to all class members in a reasonable manner. While the parties recently sent notice to class members of the registration deadline, that notice made no mention of the filing of class counsel's fee motion. *All class members* (not just those who previously entered an appearance in the case and are receiving ECF notices) have the right to object to class counsel's fee motion. FRCP 23(h)(2). Until all class members have received adequate notice of the filing of class counsel's fee motion, and have had an opportunity to object to it, this Court may not award any fees. For this reason as well, the time for objecting to class counsel's fee motion has not even commenced, let alone expired.

Class Counsel's assertion that the deadline for filing a fee petition was 14 days after their fee petition was filed is illogical and wrong. There is no reason why objectors should have rushed to file incomplete fee petitions within that two week period, in the absence of an order by this Court pursuant to ¶14 of the Final Judgment. While exhaustion of the fee fund could render subsequent fee petitions moot, due to a lack of funds to pay them, there is no reason to be concerned about this if this Court follows Mr. Miller's recommendation, which has long been followed in this Circuit, to stage the fee awards and award fees only as benefits to the Class are paid out. In this case, it should be easy to identify which claims are attributable to the objectors' amendments, and which were included in the original settlement, for purposes of allocation of credit for the settlement benefits.

CONCLUSION

Objector Cleo Miller opposes any fee award to Class Counsel or anyone else at this time, and requests that this Court (1) defer any fee awards until a date after August 7, 2017, and then (2) award Class Counsel no more than 15% of the value of settlement benefits that are guaranteed to be paid to Class Members during the first year of the Settlement Claims Process; and (3) consider any fee petitions filed by counsel for objectors as they are made, with no arbitrary deadline, based upon proven benefits conferred upon Class members as a result of the amendments.

Respectfully submitted,
Cleo Miller,
By his attorneys,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed via the ECF filing system on March 1, 2017, and that as a result electronic notice of the filing was served upon all attorneys of record.

/s/ John J. Pentz

John J. Pentz